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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 658

BENJAMIN FRANKLIN COLLINS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

PETITIONER'S PETITION FOR REHEARING

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Petitioner, on the grounds following, petitions for rehearing of his petition for writ of certiorari:

1. Invoking judicial grace rather than exercising a privilege granted by Rule 58,[1] petitioner respectfully sug-

[1] We realize, of course, that this petition for rehearing may be rejected on the threshold if deemed to be outside the scope of Rule 58 (2) but counsel feels he would be remiss in his duty to his client if he did not tender it for filing. It is offered in good faith and not for purposes of delay; nor do we request withholding of the notification required by Rule 25 (2).

gests that a brief, concise extension of argument on the more important first question raised in his petition, as advanced in his reply brief, is worthy of the Court's consideration.

2. Over fifteen years ago, in *Weiler v. United States* (1945), 323 U. S. 606, the Government asked this Court to re-examine and abandon the rule of evidence and quantum of proof peculiar to prosecutions for perjury. The request was rejected upon adherence to an earlier decision, *Hammer v. United States*, 271 U. S. 620, 626. In the case at bar the Court of Appeals, in our view, affirmed conviction of perjury on the theory that proof of falsity of petitioner's grand jury testimony, the sworn opinions of expert witnesses, comes by way of analogy within the documentary exception to the 2-witness, or 1-witness-plus-corroboration rule in perjury cases, first recognized in *United States v. Wood*, 39 U. S. (14 Pet.) 430, 439-440.

The question of importance presented in our petition for certiorari, whether the Government's case was based on evidence deemed "direct" (as the Court of Appeals held) or "circumstantial" (as petitioner claims), was not answered in *Weiler*, nor in any other decision of this Court so far as we are aware. We therefore respectfully invite the Court to reconsider its denial of certiorari in order that it may entertain jurisdiction for the purpose of settling the question.

Moreover, we respectfully re-emphasize the point that the documentary exception theory was expressly ruled out of the case by the trial Court (107a) during defense presentation of petitioner's motion to dismiss the indictment at the close of the Government's case; thereafter, we respectfully suggest, petitioner's counsel was justified in relying upon the Court's forthright and emphatic ruling.

3. While the ground here asserted is not "confined to intervening circumstances of substantial or controlling effect," it is substantial and available to petitioner, "although not previously presented" in these precise terms (Rule 58-2).

Respectfully submitted,

EDMUND E. SHEPHERD,
Counsel for Petitioner.

CERTIFICATE

The foregoing peition for rehearing is presented in good faith and not for delay; and the petition is restricted to the grounds above specified.

EDMUND E. SHEPHERD,
Counsel for Petitioner.